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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

OCT 24 2003

FEDERAL COMMUNICATIONS COMMISSION  
 OFFICE OF THE SECRETARY

**ORIGINAL**

In the Matter of )

In the Matter of Petition of WorldCom, Inc. )

Pursuant to Section 252(e)(5) of the )

Communications Act for Preemption )

of the Jurisdiction of the Virginia State )

Corporation Commission Regarding )

Interconnection Disputes with )

Verizon Virginia Inc., and for )

Expedited Arbitration )

CC Docket No. 00-218

In the Matter of Petition of AT&amp;T )

Communications of Virginia, Inc., )

Pursuant to Section 252(e)(5) of the )

Communications Act for Preemption )

of the Jurisdiction of the Virginia State )

Corporation Commission Regarding )

Interconnection Disputes with )

Verizon Virginia Inc., and for )

Expedited Arbitration )

CC Docket No. 00-251

**VERIZON VIRGINIA INC.'S REPLY TO OPPOSITION OF WORLDCom, INC.  
 AND AT&T COMMUNICATIONS OF VIRGINIA, LLC  
 TO VERIZON VIRGINIA'S MOTION FOR STAY**

Verizon Virginia Inc. ("Verizon VA") files this reply in support of its motion for stay. AT&T Communications of Virginia, LLC ("AT&T") and WorldCom, Inc. ("WorldCom") have provided no substantive reason for the Commission to deny Verizon VA's motion for a stay of the August 29, 2003, Memorandum Opinion and Order (the "*Order*"). The Commission therefore should promptly stay the *Order* pending its review of the Commission's reform of the TELRIC rules. As Verizon VA detailed in its motion, the *Order* will otherwise result in irreparable harm both to the public interest and Verizon VA. And as Verizon VA has

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demonstrated in its application for review and its reply in support thereof, Verizon VA is likely to succeed on the merits of its substantive challenges to the *Order*.

Recent events demonstrate the pressing need for the Commission to stay the *Order*. As Verizon VA previously showed, CLECs are already citing the *Order* as binding precedent in several proceedings. And indeed, the decisions of the Bureau in the Virginia arbitration *are* being treated (incorrectly) as binding authority throughout the country. Just days ago, the Fifth Circuit upheld the reversal of a PUC interconnection decision based on the Bureau's non-cost order in this case, repeatedly characterizing that order as an "FCC decision" that determines the correct interpretation of the Commission's rules. *See Southwestern Bell Tel. Co. v. Pub. Utils. Comm'n of Texas, et al*, No. 03-50107, slip op. at 5-6, 10 (5th Cir. Oct. 21, 2003). Thus, although the *Order* was decided by the Bureau rather than the full Commission and therefore is *not* binding precedent on other state commissions and courts, it is increasingly being portrayed and treated as defining new Commission rules and standards in UNE-related proceedings across the country.

This result is clearly contrary to the public interest, and will cause irreparable harm. The extreme assumptions the *Order* adopts produce drastically low rates that will lead to increased use of UNE-P in place of investment in competitive facilities. The reduction in the UNE-P rates in connection with Verizon VA's 271 application already has caused a substantial shift from facilities-based competition to UNE-P in Virginia. *See Verizon Virginia's Motion for Stay* at 39-40 (Sept. 29, 2003) ("VZ-VA Motion for Stay"). And by slashing these rates — which the Commission found to be TELRIC compliant less than one year ago — the *Order* will seriously exacerbate that trend.

The increased reliance on UNE-P is directly contrary to the public interest. Low UNE-P rates not only discourage true competition and differentiation of service; they also deter investment in facilities by all carriers and devalue existing facilities investment. *See* VZ-VA Motion for Stay at 40-41. Furthermore, the radically low rates the *Order* requires create arbitrage opportunities and subsidies for CLECs that use UNE-P, and will accordingly cause Verizon VA to lose customers and goodwill — harms that courts have uniformly recognized are irreparable.

AT&T/WorldCom have no responses to this showing. They primarily assert that Verizon VA will suffer no irreparable harm because the *Order* does not significantly decrease existing rates.<sup>1/</sup> But this argument is disingenuous. If the rates were in fact *increasing*, there would be no reason for them to oppose the stay or to claim that a stay would harm *them*, as they repeatedly do. *See id.* at 12-13 (“staying those rates would harm AT&T and MCF”).

That argument also is false. While AT&T/WorldCom focus on the marginal \$0.67 increase in the statewide average loop rate, the fact remains that the non-loop, high capacity loop, and non-recurring rates will be seriously reduced. AT&T/WorldCom suggest that the *Order's* switching rates are not too extreme because they allegedly are higher than rates that some states have set for *other* carriers. AT&T/WCom Opp. at 99-103. But the switching rates resulting from the *Order* are the lowest *for Verizon* in any of the thirty-one jurisdictions where it provides service.<sup>2/</sup> And the resulting zone 1 UNE-P rates will be among the lowest of Verizon's

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<sup>1/</sup> See Opposition of WorldCom, Inc. and AT&T Communications of Virginia, LLC to Verizon Virginia Inc.'s Motion for Stay and Application for Review at 7-10 (Oct. 14, 2003) (“AT&T/WCom Opp.”).

<sup>2/</sup> While AT&T/WorldCom claim that Verizon's switching rates in Massachusetts are lower than those resulting from the *Order*, their calculations both overstate the switching rates resulting from the *Order* and understate the rates in Massachusetts. With the correct calculations, the

rates for comparable density cells in any of the jurisdictions that it serves. Indeed, even the pre-existing UNE-P rates are substantially below the comparable New York rates, where the CLECs have taken millions of UNE-P rates.

The *Order* also will cause irreparable injury by slashing Verizon VA's high capacity loop rates by approximately 50%. As a result of the Commission's new rules concerning the availability of EELs, these rate reductions will cause widespread conversion of special access services to EELs. The Commission has recognized that such dislocation will have "severe consequences" for the special access market.<sup>3/</sup> In particular, the Commission concluded that, while special access is a "mature source of competition," conversion of special access service to below-cost EEL prices will "undercut the market position of many facilities-based competitive access providers." *Id*

AT&T/WorldCom's only effort to minimize the effect of the massive reduction in high capacity loop rates is unavailing. They claim that this reduction is of no concern, because CLECs allegedly order few such loops in Virginia today. AT&T/WCom Opp. at 9. But AT&T/WorldCom overlook the obvious fact that CLECs will inevitably flock to these UNEs — and will convert existing special access arrangements to underpriced EELs — now that the rates have been halved.

Nor is there any merit to AT&T/WorldCom's claim that because the *Order* contains definitive rates only for loops it should not be stayed at this time. AT&T/WCom Opp. at 8. The

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switching rates resulting from the *Order* are approximately 20% lower than those in Massachusetts. AT&T/WorldCom's claim that the rates in New Jersey are comparable is similarly based on incorrect calculations; the New Jersey switching rates are approximately 14% higher than the rates resulting from the *Order*.

<sup>3/</sup> Supplemental Order Clarification, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 9587, 9597 ¶ 18 (2000).

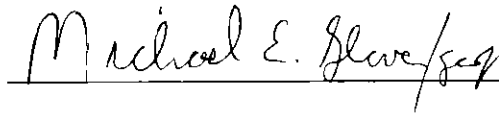
*Order* contains all necessary determinations concerning the assumptions and inputs that must be used in calculating the final rates in this case. Those determinations therefore are final and, as the *Order* states, “effective immediately.” *Order* ¶ 698. In any event, these determinations will substantially lower Verizon VA’s recurring and non-recurring rates across the board, and thus AT&T/WorldCom’s argument merely goes to *when* the stay should be granted, not *whether* a stay should be granted at all. And, as noted above, CLECs are already insisting that the Bureau’s substantive determinations are binding and should guide the decisions of other state commissions, and at least one court now appears to agree.

Finally, AT&T/WorldCom’s reliance on the availability of a true-up provides no reason to deny a stay. *See* AT&T/WCom Opp. at 10-12. A true-up cannot redress the devaluation of Verizon VA’s investment or the harm to facilities-based competition that will result from the CLEC subsidies created by the *Order*’s rates. And the effect of the *Order*’s low rates can be expected to spread: there is little prospect that CLECs will engage in rational negotiations to produce more realistic rates *anywhere* now that the *Order* has set a new, low price ceiling.

## CONCLUSION

For the reasons stated above and set forth in Verizon VA's motion for stay, the Commission should stay the *Order* pending its review or the Commission's issuance of new TELRIC rules

Submitted by

A handwritten signature in black ink, reading "Michael E. Glover" followed by a stylized flourish.

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Dated: October 24, 2003

CERTIFICATE OF SERVICE

I do hereby certify that true and accurate copies of the foregoing, Verizon's Reply to AT&T/WorldCom's Opposition to Verizon's Motion For Stay, were served by hand delivery via courier this 24th day of October, 2003, to.

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